THE UNIVERSITY OF NORTH CAROLINA

The James Sprunt Historical Publications

PUBLISHED UNDER THE DIRECTION OF

The North Carolina Historical Society

J. G. de Roulhac Hamilton } *Editors*
Henry McGilbert Wagstaff }

VOL. 17 NO. 1

CONTENTS

James Sprunt Historical Monographs

No. 1. Personnel of the Convention of 1861.
By John Gilchrist McCormick.
Legislation of the Convention of 1861.
By Kemp P. Battle.

No. 2. The Congressional Career of Nathaniel Macon.
By Edwin Mood Wilson.

No. 3. Letters of Nathaniel Macon, John Steele, and William Barry Grove, with Notes.
By Kemp P. Battle.

No. 4. Letters and Documents Relating to the Early History of the Lower Cape Fear, with Introduction and Notes.
By Kemp P. Battle.

No. 5. Minutes of the Kehukee Association, with Introduction and Notes.
By Kemp P. Battle.

No. 6. Diary of a Geological Tour by Elisha Mitchell in 1827 and 1828. Introduction and Notes.
By Kemp P. Battle.

No. 7. William Richardson Davie, A Memoir.
By J. G. de Roulhac Hamilton.
Letters of William Richardson Davie, with Notes.
By Kemp P. Battle.

No. 8. The Provincial Council and Committee of Safety in North Carolina.
By Bessie Lewis Whitaker.

The James Sprunt Historical Publications

Vol. 1, No. 1. The Society for the Propagation of the Gospel in the Province of North Carolina.
By D. D. Oliver.
Correspondence of John Rutt Eaton.

Vol. 2, No. 1. Federalism in North Carolina.
By Henry M. Wagstaff.
Letters of William Barry Grove.

Vol. 10, No. 1. Bernard Sherwood Hedrick.
By J. G. de Roulhac Hamilton.

Vol. 10, No. 2. Harriott Varnum.
By George A. Anderson.
The Political and Professional Career of Harriott Varnum.
By J. G. de Roulhac Hamilton.
Letters to Harriott Varnum.

Vol. 11, No. 1. County Government in Colonial North Carolina.
By W. C. Guess.

Vol. 11, No. 2. The North Carolina Constitution of 1776 and Its Makers.
By Frank Nash.
The German Settlers of Lincoln County and West-ern North Carolina.
By Joseph R. Nixon.

Vol. 12, No. 1. The Governor, Council and Assembly of Royal North Carolina.
By C. S. Cooke.
Early Printers in Piedmont North Carolina.
By L. R. Morgan.

Vol. 12, No. — The North Carolina Judiciary.
By James Hall Read.

THE UNIVERSITY OF NORTH CAROLINA

The James Sprunt Historical Publications

PUBLISHED UNDER THE DIRECTION OF

The North Carolina Historical Society

J. G. DE ROULHAC HAMILTON
HENRY MCGILBERT WAGSTAFF } *Editors*

VOL. 13 NO. 1

CONTENTS

THE SEEMAN PRINTERY
DURHAM, N. C.
1913

THE NORTH CAROLINA COLONIAL BAR

BY

ERNEST H. ALDERMAN

THE NORTH CAROLINA COLONIAL BAR*

Like all other studies dealing with North Carolina Colonial History, and dealing with the earlier part of the Colonial Period especially, the study of the North Carolina Colonial Bar is attended with many difficulties. The official records are so few in number and so indefinite in detail that it is little short of impossible to form any clear idea as to the condition and quality of the legal profession of the period. More than likely it is for this reason that even in the better histories of our State, written at a late date, we find no connected account of the Colonial Bar. Or perhaps Wheeler is right when he says: "The Colonial history of the judiciary under the proprietary and regal governors of North Carolina did not allow the legal profession that weight in the community that its importance merited. With despotic governors and among a restless population, rules of action declaring rights and prohibiting wrongs were but little regarded."[1]

However the case may be and whether or not lawyers were regarded as of great importance by the early North Carolinians, it is a fact that we have few records to show how they were regarded as a class.

Again, the few records which we do have are almost exclusively adverse to the lawyers. They form a chain of protests against the bar and of legislation passed with the intent to control and suppress its members.

The first record which I have been able to find in connection with the subject, for instance, is directed against the members of the Bar. Locke's Fundamental Constitutions for North Carolina (1669), article 70, says: "It shall be a base and vile thing to plead for money or reward; nor shall anyone (except he be a near kinsman no farther off than cousin german to the party concerned) be permitted to plead another man's cause till, before

* This paper was awarded the first prize, given by the North Carolina Society of Colonial Dames of America for research in North Carolina Colonial history by undergraduate students of the University.

[1] History Sketches of North Carolina, page 99.

the judge in open court, he hath taken an oath that he does not plead for money or reward, nor hath, nor will receive, nor directly or indirectly, bargained with the party whose cause he is going to plead, for money, or any other reward for pleading his cause."

Thus, at the beginning of the establishment of the colony the profession which now is regarded as one of the most noble was condemned. However, as Ashe suggests, the purpose of this provision was possibly to build up a clientage for the great lords and add to their importance.

From that time on, however, we get accounts of difficulty after difficulty between the lawyers and the courts, or between the lawyers and the people. This was probably due to the method by which lawyers were licensed. From the earliest time on to very near the time of the Revolution they were granted license by the governor with no restriction whatever, except the custom which grew up of the Chief Justice, after a perfunctory examination, recommending candidates to the governor. Naturally enough, many men were thus permitted to practice who had no scruples whatever—men who manipulated the courts so that they could squeeze as many fees as possible out of their clients.

Therefore, from the records we are forced to believe that lawyers as a class bore an unsavory reputation in the early days. On the other hand we know that many of them were great and patriotic men. In the disputes and quarrels leading to the Revolution, in the Revolution itself, and finally in the organizing of the State, many of the leaders were sincere and patriotic members of the bar.

Of the early years of the North Carolina Colonial Bar, as said, we know little. The first notice of lawyers being in the colony that I find in the Colonial Records is as follows:

"At a Court Holden at The House of Diana F. Fosters—The First Munday In February Anno. Do. 1693-94.

"A Judgment confessed by Major Lillington and Mrs. Susanna Hartley as Attorneys to Capt. George Clark for £35, s.19 with cost alias Execution; Ordered that Major Alexander Lillington and Mrs. Susanna Hartley in their capacities aforesaid

do pay unto Colls. Wm. Wilkerson sum of £35, s.19 cost aforesaid."[2]

We could not tell from this whether Lillington was a practicing attorney-at-law or merely an attorney-in-fact, but later records show that he was a licensed practitioner.

From then on through the Records we find name after name listed as an attorney. From this we get the following list named in the order in which they first appear, together with a few gathered from other sources, namely:

Maj. Alexander Lillington, Capt. Henderson Walker, William Glover, Francis Tomes, John Hawkins, Edward Mayo, Richard Plater, Stephen Manwaring, Andrew Ros, Hanabell Haskins, John Porter, Francis Hendrick, John Durant, Barbary Middleton, Wm. Duckenfield, John North Cote, Dan Akehurst, Thomas Pollock, George Durant, Callom Flynn, Jacob Peterson, Gabriel Newby, Caleb Calloway, James Long, Richard Plato, Christopher Butler, James Thigpen, Robert Fendell, Archbill Homes, John Falconer, Thomas Norcum, John Stepney, John Anderson, Thomas Snoden, Richard Burthenshall, Capt. Cole, John Heckelfield, William Wilkeson, Thomas Boyd, Sam Swann, Peter Godfrey, Hugh Campbell, James Locke, Nath Chevin, Thomas Norkam, John Winbury, Dennis Macclendon, John Foster, Isaac Wilson, Wm. White, Arnold White, John Clarke, Ed. Berry, Richard Henderson, John Pettiver, Edward Moseley, Ed. Bonwicke, James Locke, Lewis Cannon Marcht, John Lorricke, John Palin, Thomas Boyd, Dan Guthrie, Dan Richardson, Joell Martin, Augustine Scarborough, Thomas Bray, Thomas Henneman, Will Little, Thomas Swann, Thomas Jones, John Baptists Ashe, John Culpepper, McGuire, David Osheat (Osheal), James Everard, Henry Pendleton, William Hooper, John Penn, Abner Nash, Marmaduke Jones, William Charlton, Stephen Dewey, Mr. Hodgson, Richard Neale, Edmund Fanning, John Williams, Mr. Lucas.[3]

Many of these men were little known—in the case of some of them the only mention being the one noting their acting

[2]Col. Record, Vol. I—392.

[3]This list is not claimed to be complete. Probably names of many men who began to practise just before the Revolution should be included, but as they were not connected with colonial history proper, I have omitted their names.

as attorneys in certain cases. Many of them, on the other hand, we meet with again and again in colonial history. In the case of several we cannot be sure that they were regular practitioners, but it is clear that for the most part they were. The list is long enough to show that despite opposition to their profession there were many of them during the hundred years of the colonial period—especially is this so when we remember that the records are very limited.

Our object now, however, is to take up in a general chronological order the history of the profession in that period, and incidentally to study the careers of particular members of the profession.

As early as 1695 we find that certain members of the Bar were in trouble with the courts, as the following—borrowed from Hawk's History of North Carolina—shows:[4]

FROM COURT RECORDS

1695—"Ordered that the marshall take into custody Stephen Manwaring, and him safely keep until he shall find surety for his appearance the second day of the next general court, to answer for his contemptions and insolent behavior before the court, and to be of good abearance in the meantime."

"Whereas it appears unto this court that Stephen Manwaring hath been a juryman in the precinct court of Perquimans, in a cause wherein he was before retained as an attorney: ordered that the said Stephen Manwaring be not suffered to plead as an attorney in any court in this government.

"Upon the humble petition of Stephen Manwaring, praying that he may have until the fifth day of the next general court to make proof that he informed the court of his being of council in the above-mentioned cause before he was sworn of the jury; the above order is suspended until the fifth day of the next general court that the said Stephen Manwaring may make proof of his above-mentioned assertion."

1697—"Whereas, at a general court, holden the 26th day of February, 1695, Stephen Manwaring was, by order of the said court disabled from pleading as an attorney in any court of

[4]Vol. II, p. 111.

record in this government; which order was suspended upon the petition of said Manwaring, and day given him to the then next general court to clear himself from the information then brought against him; which he, the said Manwaring not having done, the said order passed against him is hereby revived and confirmed. And it is hereby ordered that the said Stephen Manwaring shall not be from henceforth permitted to plead as an attorney in any court of record in this government."

1695—"Whereas, Col. William Wilkeson and Capt. Henderson Walker have offered sundry affronts to the members of this court; ordered that neither the said Col. Wilkeson, nor the said Henderson Walker from henceforth be allowed to plead as attorneys in this court in any person's cause, except in the cause of such persons as have not their residence in this government.

"Col. William Wilkeson comes abruptly into the room where the Hon. Thos. Harvey, Esq., deputy-governor and council were, and there using some violent discourse was desired to give some of the council liberty to speak, and replied, 'I have given you all too much liberty, and especially to you,'—directing his speech to the Hon. Daniel Akehurst."

It would be interesting to know further details of these conflicts and of the men connected with them. We know indeed that all three of the men mentioned above as having been forbidden to practice were prominent men in the colony. Walker was afterward governor for a short period, and his rule was extremely beneficial to the colony. Wheeler tells us that "under the mild rule of Gov. Walker, the inhabitants of North Carolina increased in the enjoyment of the highest personal liberty." As he had been a judge of the Supreme Court, he was especially interested in the judiciary. As a result an important change took place in the judiciary. Whereas "the general court had been held by the chief magistrate, the deputies of the lords proprietors, and two assistants, a commission was now issued appointing five persons Justices of the Supreme Court.[5]

At this period, as all our historians agree, the most prominent men of the colony were attorneys, among them being Alexander

[5]Wheeler.

Lillington (died 1697), Major Sam Swann, Thomas Pollock, Henderson Walker, Wm. Glover, and John Porter.

A letter of William Gale's—written about 1700—tends, however, to prove an above statement to the effect that lawyers as a class suffered under an unenviable reputation. He says in part: "Most who profess themselves doctors and attorneys are scandals to their profession." This attitude was probably due to the fact that professional men were now beginning to be exorbitant in their fees—a thing which is shown by the fact that beginning now and going on up to the Revolution there was a continual stream of legislation, or attempted legislation, to regulate fees of attorneys.

In a court record[6] for 1703 we find an entry which is interesting in that it gives us an idea of how the early settlers gave the power of attorney to their lawyers, namely:

"Know all men by these presents that I, Henry Becker, of Virginia, Nominated, Constituted, Authorized and Appoynted and in my stead and place do put my very good friend Sam Swann Esqr. in Carolina to be my true and lawful attorney irrevocably to sue for Levie Recover Receive Demand and take of Wm. Early of ye said Carolina ye sum of 24:17:4½ Or any other person or persons Indebted to ye sd Baker within ye abovesd Country Giving and Granting into my said Attor. my full and whole power and Lawful Authority in ye execution of ye premisses to arrest attack Implead Imprisson and out of Prison againe to Deliver ye sd Wm. Early his heirs etc. until they or some of them shall have fully satisfied ye Debt abovesd And upon Reciete thereof or any part thereof acquittances or any other Lawful discharges in that behalf for me and in my name to Do Conclude and Finally in as full Large and ample a manner as I may Might or Could Do were I personally present Ratifying Allowing and Confirming all and whatsoever my said Attor. shall legally Do or Cause to Be Done herein given under my hand and seale ye 17th Day of April 1703.[7]

"HENRY BAKER.

"Sele & Delivered in presence of
"RICHARD BARFIELD."

[6]Col. Rec. Vol. I—587.
[7]This was the form for granting power of attorney. As such was generally given only to attorneys-at-law, I quote it.

For a number of years after this we get no important records bearing on attorneys. The colony was apparently too busy fighting Indians to think of anything else.

In 1718, however, we get another glimpse of the governor's despotic influence over lawyers, and for many years thereafter the historical account of the colony is filled with chronicles of several members of the bar. One of the chief of these was Edward Moseley, possibly the most prominent of colonial lawyers.

Moseley came to the colony in 1704 and immediately began to play an important part in affairs of the province. He seems to have acquired a considerable practice and a still more considerable influence. He became surveyor-general, member of the council, Speaker of the Assembly, Chief Justice, and held other important offices at various times.

The incident of 1718, spoken of above, grew out of a quarrel between Moseley and Governor Eden. During Eden's administration (1714-1722) the colony was much troubled with pirates, the most daring of these being a man by the name of Teach—more familiarly known as "Blackbeard." The government seemed to be absolutely unable to do anything with Teach. Several expeditions were despatched against him, but they did not stop his depredations. As a result, many in the province came to the conclusion that the government was secretly in league with the pirate. The following from Wheeler[8] tells about this excellently:

"The character of Governor Eden suffered much by a supposed intimacy with Teach. Edward Moseley, who was a prominent man in the colony, declared that the governor could raise an armed posse to arrest honest men, though he could not raise a similiar force to apprehend Teach, a noted pirate; and on Teach's dead body was found a letter of his (the Governor's) secretary, Tobias Knight, intimating proof of Knight's friendship and Eden's respect.

"Moseley was subsequently arrested for a misdemeanor himself, and tried by the General Court, convicted, fined one hundred pounds, silenced as an attorney, and declared incapable of

[8]Historical Sketches, page 39.

holding an office in the colony during three years. The Governor laid before the council (1719) an account of his proceedings against Teach. The council expressed their approbation of his conduct."

Moseley may have been somewhat rash in his assertion, but it is hard to believe that he could have been malicious in making it. His general character seems to have been good, as his popularity attests. Whatever motive prompted him to make the charge, the result of the incident shows the power which the governor possessed over licensed lawyers.

Shortly before this,—or in 1715—two legislative acts were passed by the Assembly which had an important bearing on the bar. Both of these arose out of complaints against lawyers by the people. Fees must have become exorbitant, for we see several attempts to regulate them. Finally, after a great amount of quibbling, the following were set down as legal fees:

ATTORNEY'S FEES[9]

	lbs.	s.	d.
For every cause in General Court	0	0	10
For every indictment or information on a Bill Found	2	10	0
For same in Precinct Court	0	5	0

The second resulted from complaints caused by commissioners and minor court officials—who were especially exorbitant—acting as attorneys. The act reads:

"An Act relating to the Justice Court of Pleas, and to prevent the Commissioners and other inferior officers of the said courts pleading as Attorneys.

I. It is enacted by His Excellency the Pallatine and Lords Proprietors of Carolina and with the advice and the consent of this present General Assembly now met at Little River for the No. Part of the said province.

"II. And It is Hereby Enacted that from Henceforward there shall not be at one time more than one of the Lords Proprietors Deputies Commissionated to sitt as Judge or Justice

[9]Col. Rec. XXIII—86.

in the General Court nor more than one of the said Deputies or Justices of the General Court commissionated to sitt or Act in any of the precinct courts of this Government.

"III. Be it further enacted that by the authority aforesaid no Commisrs., Sheriffs, Under-Sheriffs, or Clerks of any court within the colony shall be permitted to plead as an Attorney in the court where he officiates under pain of being fined the sum of ten pounds, one-half to the informer and the other half to the use of the Publick (except it be in his or their own cause, or as General Attorney for persons out of the government).

"IV. And provided also that this act nor anything therein contained shall not be construed and adjudged to prevent or hinder anyone of the Commrs. of any court being assigned by the court to plead the cause of any person hereafter to be admitted to sue in *Forma pauperis*—such commr., or commrs., not giving judgment in the said case, anything herein before contained to the contrary notwithstanding."[10]

EDWARD MOSELEY, *Speaker.*

CHAS. EDEN,
N. CHEVIN,
C. GALE,
FRANCIS FOSTER,
L. KNIGHT.

This act was in force for about thirty years, but it does not seem to have helped matters to any extent. It was repealed in 1746.

The next record of particular importance comes in 1722. This record is of interest in that it involves one of the prominent lawyers of the day and shows the boldness of his spirit. I find the record set down in Hawk's History of North Carolina.

ABATEMENT OF A SUIT BY REASON OF THE PLAINTIFF'S OUTLAWRY

"1722—And now here at this day, came the said Robert Peyton, by Daniel Richardson, his attorney, to prosecute his suit against Thomas Swann, for speaking and uttering divers false and scandalous words, to-wit, that he, meaning the said Robert

[10]Col. Rec. XXIII—16.

Peyton, and speaking of him as he had served as foreman of a jury in Curratuck—was foresworn, and made the rest of the jury forswear themselves; from which said false and scandalous words the said Peyton saith he hath damage to the sum of 100 lb., and therefore brings the suit, etc.

"And the said Thomas Swann, in his own proper person (he was one of the attorneys of the province) comes and defends the force of the injury, etc., and for plea says, that the said Peyton, his action, aforesaid, against him the said Swann ought not to have and maintain, and for proof thereof produces here in court a certificate under the colony seal of His Majesty's dominion of Virginia, whereby the said Peyton appears to be outlawed by the General Court of the said province. Whereupon the plaintiff prays leave to discontinue his suit. Wherefore it is considered that the said Peyton may go from here in mercy, and the said Swann may go without day, And the said Peyton pay cost alias execution."

The fifteen years following this episode was an eventful period in North Carolina. The conflicts between the people and their government increased in number to such an extent that at last the proprietors gave up and sold their rights to the King. Then many years were spent in trying to straighten out the difficulties, but the efforts brought on only the more conflicts. There was struggle between the people and the King, through his governor, over the currency, over property rights, over the courts, over taxes,—in short, over everything; for the people were rapidly becoming tired of foreign rule. They were beginning to acquire the spirit of the Revolution and of independence.

In all these struggles we find among the leaders several members of the colonial bar. Especially prominent among these was Edward Moseley, long the leader of the so-called popular party. An account of his deeds alone, or an account of the deeds of many of his brother lawyers would easily fill volumes. It all goes to show that in colonial times—as indeed in any time —though the attorneys may have had numbers of avaricious, ambitious, and selfish men among them, there was a sufficient

number of good, unselfish, and patriotic men among them to save the name of their profession.

The effect of the conduct of those lawyers who were seeking only their own welfare was strong enough, however, to lead to great protest among the people. As the old law did not provide sufficient remuneration to the lawyers they constantly avoided it. Many were extremely greedy in demanding fees. Again, through intrigue, they would have even the minor cases continued from court to court, and thus add to their receipts. They were aided in this by many of the minor court officials and in some cases by the more important officials, who would add to their gains by the same means. The people rebelled. As a result several measures were passed regulating the fees of the officials and also of the attorneys. The most stringent of these came in 1743, namely:

"An Act to ascertain what attorneys' fees shall be taxed and allowed, in any suit of Action brought in any of the Courts of Record in this province.

"I. Whereas there is no Fee, by Law, allowed to be taxed in any Bill of Costs, sufficient to compensate any attorney for his trouble for prosecuting or defending any suit or cause in any of the courts of the province.

"II. Be it therefore enacted by his Excellency, Gabriel Johnston, Esqr., Governor, by and with the advice and consent of this Province, and by the authority of the same that from and after Ratification of this Act, the several and respective Attorneys' Fees herein-after mentioned shall be taxed and allowed in the courts following; that is to say, in the General Court, on any action brought, or suit commenced there, or by Petition, Thirty Shillings, Proclamation money.

"III. And to the end that such fees shall be received and paid to whom the same shall be due, Be it enacted, by the Authority aforesaid, That upon Dismission of any suit, verdict for the Plaintiff or Defendant, or that the Plaintiff shall become nonsuit, or the suit otherwise discontinued, the clerk of each and every of the said and respective Courts shall insert an Attorney's Fees in the Bill of Costs taxed in the said cause, and shall cause

the same to be levied as other fees, and paid to the parties who have a right to receive the same.

"IV. Provided always, That the Fees above-mentioned for suits commenced as aforesaid, in the county courts, shall not be allowed or taxed on appeals brought from any Justice or Justices, in the said Courts, on the Law for Tryal of small and mean causes.

"V. And be it further enacted, by the authority aforesaid, that if any practicing attorney in any court of record in this Province, shall neglect to perform his Duty in any action in which he shall be retained, or commit any fraudulent practice, said attorney shall be liable to an action on the case at Common Law, in the General or County Court in this Province, to the party injured; and on the verdict passing against him, Judgement shall be given, by the said court, for the Plaintiff, to recover Double Damages with costs of Suit."

What was said about the act of 1715 to regulate fees—that there was much preliminary quibbling before it was finally passed—may be said, with still more emphasis, concerning this act of 1743. The bill was introduced in the Assembly several times before it finally received attention. There it was passed up to the council, by which body it was amended. The amendments were in part unsatisfactory to the Assembly, and the two Houses entered into considerable argument before it was finally passed in the above form.

Another bill bearing on attorneys was introduced at about the same time as the above one. This second bill was concerning the admission of candidates for the bar. To repeat, the appointment of attorneys during the period was left entirely to the Governor, though the custom was for the Chief Justice to examine candidates and recommend them to the governor.

The Assembly quite justifiably felt that this was not right. Hence it prepared a bill providing for regular examination of candidates. It was passed and sent to the Council. The Council amended it and sent it back to the lower house; as the latter would not accept the amendments, the bill was temporarily lost.

We next hear of it in 1753. The following House records tell us of its treatment this time, namely:

February, 1753.

"Introduced by Mr. Vail and Mr. Bartram: The bill directing the examination and admission of persons hereafter to be permitted to plead or practice the law in this province.[11] April 9, 1753:

"On reading the bill directing the examination and admission of lawyers hereafter to be permitted to plead, etc. This House was pleased to send the following message, to-wit

Mr. Speaker, and Gentlemen, etc.:

"We observe that in the bill directing the examination and admission of persons hereafter to be admitted to plead and practice the law in this province, your House has thought fit to *dele* the following clause And if any attorney shall act contrary to his duty, the Governor and not less than five of the Council upon complaint and proof thereof, made before them, may supercede such attorney's license, and suspend him for a time, or disable him forever, as they shall think just.

"We apprehend that if complaint against practices of the law, are not to continue to be cognizable before the commander-in-chief of the Council where complaints against all officers in the province are cognizable, and by whom they may be suspended; it will be difficult, if not impracticable, for his Majesty's servants to have relief against the misdemeanors of the Gentlemen of that profession. We, therefore, cannot recede from our amendment, but desire your concurrence, which if your House agrees to, please to send two of your members to see the same done."[12]

With this action on the part of the Upper House, consideration of the bill again closed. Nevertheless, the people were determined that some action should be taken in regard to better control of lawyers, and their demands were finally complied with, as we shall see later.

[11] Col. Rec. Vol. V—42.
[12] Col. Rec. Vol. V—49.

These struggles over the lawyers, however, made up but a small part of the strife of Governor Johnston's administration (1734-52). The main part of it was on account of currency legislation, and of quit-rent legislation. Governor Johnston appears to have been in trouble with the Assembly, with his Council, and even with his home government. In 1748, in fact, a strong effort was made to displace him. In this effort Henry McCulloh, a man of considerable property in the colony, took a prominent part. In a series of memorials to the Board of Trade of London he recounted the misdeeds of the Governor. I quote some extracts from these memorials, as they have an important and interesting bearing on our subject:

"*To the Board of Trade*:

"When your memorialist sent a letter of attorney to two lawyers to act for him, the answer was, that they, or any other lawyer in that province durst not attempt to act in any matter against the said Governor (Johnston) for as they had the liberty of pleading by license from him only, he in that case would withdraw the said license and so prevent them from pleading."[13]

"The attorneys and lawyers of the courts are under such dread of having their licenses recalled, and consequently deprived of getting their Livelyhood that they are unwilling to give their evidence in any matter, which hath prevented proof being made of what was charged in the relation to the Governor's arbitrary manner of proceeding in Injunctions."[14]

Johnston made a reply to the charges of the memorialist, whereupon McCulloh defended his position in another memorial. In this we find the following:

"What your memoralist charged in relation to injunctions hath to his knowledge been frequently complained of by all the lawyers in the said colony, and if the Governor had been innocent in that respect, he could have easily procured one or two of the most eminent of the lawyers there to certify to the falsity of the said charge, but that would not answer his purpose,

[13]Col. Rec. Vol. IV—1102.
[14]Col. Rec. Vol. IV—1111.

wherefore he hath enjoined silence under the penalty of withdrawing their licenses to plead."[15]

These memorials had no effect, for Johnston kept his office until his death in 1752. They give grounds to believe, nevertheless, that Governor Dobbs,—when he himself was accused of intimidating lawyers—was right in saying, "That he was not as arbitrary in his official conduct as Governor Johnston, in that he never disbarred attorneys whom he disliked, at his own sweet will, as Governor Johnston did in the cases of Mr. Hodgson, then Speaker, and Mr. Samuel Swann, afterwards, Speaker."[16]

One other thing bearing on our discussion remains to be noticed as occurring in Johnston's administration. In 1749, a general revisal of the laws of the colony was made, and in this revisal, certain English laws were declared to be in force in the colony. Among these was a provision providing for the punishment of an attorney found in default; also, among these was an act requiring the practitioners of the law to take the oath, and subscribe the declaration therein mentioned.[17]

In an entry in a court record for 1753, we get an example of the formality of admission of lawyers who were already licensed practitioners outside of the colony. It is:

At a council 1753.

"Mr. Richard Neale produced a certificate of his Admission as an Attorney from the Clerk of the Court of the King's Bench in England, which being read, he took Oaths by Law Appoynted to be taken, Made and subscribed the Declaration against Transubstantiation and took the Oath of an Attorney."[18]

In the administration of Governor Dobbs there are again signs of dissatisfaction over the method of control of attorneys. In a report of the Committee on Propositions and Grievances, made Jan. 9, 1755, there is the following entry:

(5th)—"That the growing Number of Attorneys (occasioned by want of a proper method of Enquiring into their Probity,

[15]Col. Rec. Vol. IV—1147.
[16]Col. Rec. Vol. VI. Intro. XXXV.
[17]Col. Rec. Vol. XXV—320.
[18]Col Rec. Vol. V—31.

good Demeanor, and Ability) And their Mismanagement of Causes either through Ignorance or Neglect, whereby their Clients lose their Suits without any Remedy of Recovering their costs of such Attorneys, is a grievance."[19]

For some reason—possibly because it was controlled by some of the exorbitant lawyers complained of—the Assembly apparently did not sympathize with those complaining. In a report sent by Dobbs to the Board of Trade complaining of the defiance of the Assembly, he says: "They next, to show their power, expelled a member who had been expelled in a former Assembly, and who was now elected for a different county, under pretense that he had sworn rashly in a former committee (though this was a new assembly) the chairman of which, though no Magistrate, having illegally taken upon himself to administer an oath; but the true reason was his having brought in a Bill to lessen the lawyers' exorbitant Fees, some of whom were so avaricious as to take a Fee of ten pounds, where only thirty Shillings was due by law."[20]

Owing to the hesitation of the legislative body, therefore, action regarding the regulating of attorneys was delayed. In 1760, after many years of demand for such an act, the following law was passed:

LVII. "And whereas, as well The Dignity of the Courts as the Security of the Suitors, depends greatly upon the capacity and probity of Lawyers practising in the same: Be it therefore enacted by Authority aforesaid (Governor, Council, and Assembly) and it is hereby Enacted, That no Person who hath not already obtained a License shall hereafter be admitted as an Attorney to practise the Law, or a Counsellor to plead in the Superior or Inferior Courts in this Province, unless he shall first have been regularly examined as to his knowledge in Matters of Law, and the practise of Court, by some one of the Judges of the Superior Courts; and shall have obtained a certificate under the hand of such Judge, recommending him to the Governor or Commander-in-Chief for the time being, as properly qualified to practise the Law, or plead as aforesaid,

[19]Col. Rec. Vol. V—300.
[20]Col. Rec. Vol. VI—246.

and shall likewise have obtained a certificate from the Justices of the Inferior Court of the County wherein he shall reside, certifying him to be a person of good character; and no license shall be hereafter granted to any persons to practise the Law, or plead in any of the Courts of Law or Equity, until such certificates shall be by him obtained. Provided, That nothing in this Act shall be construed to prevent the Governor or the Commander-in-Chief for the time from granting a License to any person who shall remove from some other part of his Majesty's Dominions into this Province, without the certificate of a County Court within the same, so as such person shall bring credentials from the Governor or Judges of the Principal Courts of Justice of the Province, Colony, or Dominion, from which he shall have so removed, properly testifying his character as aforesaid, anything herein to the contrary notwithstanding.

LVIII.—"Provided also, That nothing herein contained shall be construed to debar any Lawyer called to the Degree of a Barrister in England from practising or pleading in any of the Courts of Judicature in this Province in the Manner as might have been done before the passing of this Act."[21]

Before the passing of this act there was a great quarrel between the Assembly and Governor Dobbs—a quarrel which directly concerned the lawyers of the province. In 1754 a bill had been passed establishing Supreme Courts and enlarging the jurisdiction of the county courts. This bill created the office of Associate Justice, "the appointees to hold during good behavior, and in the absence of the Chief Justice, they were to exercise full jurisdiction. As a qualification for appointment they were to have been Barristers of five years' practise in England or attorneys of seven years' practise in this or adjoining province. These features were objectionable to the Board of Trade, for they restricted the power of the King to select, thus encroaching on his prerogative and they also rendered justices independent of the Crown."[22] As a result, the Board of Trade repealed this act in 1759. Since the Assembly and the Governor

[21]Col. Rec. XXV—448.
[22]Hist. of N. C., Ashe, 297.

could not agree on a new act, the province was without a court law for nine months. The Assembly refused to pass any Aid Bill, providing appropriations for the government of the colony, until the proposed court law should be ratified. At the end of the nine months the Governor, therefore, gave in and allowed the law to be enforced for two years, provided the King was willing. For ten years thereafter this court law was renewed every two years, until finally a permanent one was declared to be in force.

The associate judges appointed in 1761 under this new law were Marmaduke Jones, William Charlton, and Stephen Dewey. All of these men were highly capable, efficient lawyers, and had had an extensive practise.

This disagreement over the courts, together with other points of conflict, led the assembly in its turn to complain against Governor Dobbs. They directed a set of twenty resolutions against him and petitioned the King for a redress of grievances (1760). Dobbs answered all of these resolutions in detail. Below is the sixth resolution and the Governor's answer:

" 'That the granting Licenses to persons to practise the Law who are ignorant even of the rudiments of that science is a reproach to Government, Disgrace to the Profession, and greatly injurious to Suitors.'

"Answer: The insinuated censure intended by this resolve will, I hope, appear to be undeserved when I acquaint your Lordships that to prevent my being teased to license persons unknown to me, I laid it down as a rule that I never departed from but in two instances, that I would never grant a license to plead either in the Supreme or County Courts until I had either a written or a verbal recommendation from the Chief Justice, which not only eased me of frequent solicitations, but would take off any charge against me if any improper persons were admitted. The only two instances in which I granted licenses without such recommendations were to Col. Ruddick, a lawyer of long standing in Virginia, who had lands on the Northern frontier of this province, and consequently had dealings here, and upon his visiting me at New Bern some time after my

coming into this government, he desired a license from me, which by his long practise in Virginia and possessions in this province, I thought him entitled to, and without any recommendation from the Chief Justice I gave him one. The other instance was a gentleman a long practitioner at Norfolk in Virginia, who had obtained a power of attorney from Governor Tinker to sue for some lands he had a right to by Col. Bladen's daughter, which lay upon the boundary lines between Virginia and this province, he therefore applied to me for a License to finish these affairs, which I thought reasonable and granted it without waiting for the Chief Justice's recommendation, I never swerved from this rule which I laid down for myself in any other instance nay even since the Attorney General, Mr. Childs' arrival he recommended to me Mr. Lucas who came over with him for a license which I refused until I received a recommendation from the Chief Justice, Mr. Berry."[23]

I have quoted this long passage from the Governor's letter because it pictures the whole condition of the Colonial Bar at this period. On the one hand we have a view of the despotic Governor who shields himself behind the usages of custom. On the other hand we feel from his remarks the powerful spirit of the people which was constantly threatening his despotic rule. Even though we take the Governor's defence of himself as strictly true, we nevertheless feel that the jealously watchful eyes of the people alone restrained him from assuming entire control over the Bar. Nor do I mean to make any special criticism against Dobbs. The same is true of the other Governors—Johnston, for instance, with whom Dobbs compared himself as noted above. Where there is smoke there is fire. The people would not have made so many complaints against the methods of licensing lawyers unless the Governor had to some extent misused his power.

In his answer to the next resolution against him, Governor Dobbs gives further light upon the conditions of the day. This resolution, the seventh, condemned him for accepting four "pistoles" as fees for licensing lawyers. He replies, "I must

[23]Col. Rec. VI—289-290.

observe that it was constant usage to take a guinea for each license, an exorbitant charge upon the lawyers whose usual retaining fee in Chancery is ten pounds, sterling, instead of three pounds currency as the law allows." Further in his answer he shifts the blame for taking the four pistoles upon his secretary who apparently took them without Dobbs' knowledge. Whoever was to blame, the incident shows again the absolute need of the law of 1760, quoted above.

Passing from the turmoil of the rule of governor Dobbs, we find still greater in that of Governor Tryon. Before entering into an account of these troubles, however, it will be interesting to consider a selection from a letter of Tryon's to the Earl of Shelbourne, written in 1767. The passage which I quote below gives a good summary of the condition of the Colonial Bar in that year:

"There is in this province no other class or distinction of lawyers than that of Attorney at Law. The same person issues a writ, draws and files declarations, pleas, etc., and pleads the cause at the Bar, so that he is at the same time attorney and counsel for his client. None are entitled to act as Lawyers in the Province unless they have taken the degree of Outer Barrister in some of the inns of court in England, or have license from the Governor here, and in fact the last is the most general qualification under which the attorneys in the province act, although there have been some instances to the contrary, yet the general rule in obtaining such license is that the man who intends to apply for it shall have the Chief Justice's recommendation testifying the knowledge and probity of a candidate, and before obtaining such recommendation the Chief Justice did commonly examine the candidates. The recommendation and license obtained in consequence of it doth often restrict the candidates' practice to the inferior courts only, and such must obtain new recommendation and license before they are allowed to practice in the higher courts of judicature. The other and higher kind of license is without limitation, and the party obtaining it may act as attorney and counsel in all the courts of law and as solicitor and counsel in the courts of equity in the

province. These licenses have often been granted during the pleasure of the Governor only, but notwithstanding of this clause it has been determined in our Superior Court upon good deliberation that they ought not to be deprived of the exercise of their profession unless good cause is assigned and proved, since with no propriety it can be called an office, being no more than a license to follow a profession in which every man has the right to employ him or not according to the opinion he entertained of the knowledge and honesty of his lawyer. It is computed that there is about forty-five lawyers who practice in this province. Out of this body the Attorney General is taken commonly, and this officer, within the province, has all the powers, authorities, and trusts that the Attorney and the Solicitor General of England have in that kingdom."[24]

From the general tone of this letter we would think that the condition of the Colonial Bar had at last come to an equilibrium; that the members of it were satisfied with it; that the legislative bodies were satisfied with it; and, finally, that the people were satisfied with it. Such was not the case. In the next year, 1768, a struggle broke out which was directed in part at least against the lawyers of the province. This struggle is known as the Regulators Movement.

Space does not allow me to enter into a detailed discussion of this movement. Therefore I shall give as brief an account of it as possible, and quote only those documents which have the more important bearing upon our subject.

In spite of Governor Tryon's assertion that lawyers were in no sense officials, but were merely professional men, the popular mind of the day classed them as officials in a certain sense. Therefore, the Regulators, who rebelled against what they regarded as excessive taxes and exorbitant fees of court officials, rebelled also against the exorbitant fees of the lawyers. Governor Martin later reported that "the regulator troubles were provoked by the insolence and cruel advantages taken by mercenary, tricky attorneys, clerks, and other little officers, who practiced every

[24]Col. Rec. VII—485.

sort of rapine and extortion."[25] This statement summarizes the whole story.

These regulators finally became so rebellious that they broke up the superior court at Hillsboro, September, 1770. We have the following record of this:

Saturday, September 22, 1770.

"Several persons stiling themselves Regulators assembled together in the Court Yard under the conduct of Harman Husbands, James Hunter, Redneys Howell, William Butler, Samuel Devinney and many others insulted some of the members of the Gentlemen of the Bar, and in a violent manner went into the Court House, and forcibly carried out some of the attorneys, and in a cruel manner beat them. They then insisted that the Judge (Richard Henderson) should proceed to the Tryal of their leader, who had been indicted at a former Court, and that the Jury should be taken out of their party.

"Therefore the Judge finding it impossible to proceed with honor to himself and Justice to his country, adjourned the Court till morning 10 o'clock, and took advantage of the night and made his escape, and the Court adjourned to Court in Course."[26]

The lawyers who were whipped were John Williams and Colonel Edmund Fanning. Of Williams we know nothing further. Fanning has been defended by some historians and biographers, and scathingly condemned by others. It is not my purpose to do either. He was a man of much prominence in the province, a lawyer of extensive practice, and an important court official. That he was exorbitant in his fees and merciless in his methods is established beyond question.

This movement of the western counties was subdued by the best element in the province—the element which later rebelled and won independence. In its number were prominent members of the Bar.

Out of the conflict several petitions were presented and I quote two below as they have an interesting bearing on our discussion, though their influence was more indirect than direct.

[25] Ashe, History of N. C.,—403.
[26] Col. Rec. VIII—235.

PETITION OF MEN OF ORANGE AND ROWAN COUNTIES TO THE GOVERNOR, COUNCIL AND ASSEMBLY

[In part.] "That we your poor petitioners, now do and long have laboured under many and heavy Exactions, Oppressions, and Enormity committed on us by Court officers, in ever Station: the Source of which our said calamity, we impute to the Countenance and Protection they receive from such of our Lawyers and Clerks as have obtained seats in the House of Representatives, and who intent on making their own fortune, are blind to and solely regardless of their country's interest; are ever planning such schemes, or projecting such laws as may best Effect their wicked purposes—witness the Summons and petition Act, calculated purely to enrich themselves, and Creatures at the expense of the poor Industrious peasant, beside a certain air of confidence, a being a Part of the Legislature gives these Gentlemen, to the perpetration of every kind of Enormity within reach of their respective offices; And seeing Numbers either from Interested views, for the sake of threats, or from other sordid motive, are still so infatuated as to vote for these Gentlemen, whereby to advance them to that important Trust; tho' themselves and their familys sink as a consequence, and seeing these inconsiderate Wretches, involve your poor petitioners together with Thousands of other honest industrious familys in the Common Destruction. We therefore implore your Excellency, your honours, and your worthys in the most supplicative manner, to consider of and pass an Act to prevent and effectually restrain every Lawyer and Clerk whatsoever, from offering themselves as Candidates, at any future Election of Delegates within this Province; and in case any such should be chose, that choice shall be utterly void in the same manner as the Law now allows in case of Sheriffs being elected."[27]

COMPLAINTS OF PETITIONERS OF ANSON COUNTY

[In part.] "That Lawyers, Clerks, and other pensioners in place of being obsequious Servants for the Country's use were become a nuisance, as the business of the people was often tran-

[27] Col. Rec. VIII—81-82.

acted without the least degree of fairness, the intention of the law evaded, exorbitant fees extorted, and the sufferers left to mourn under their oppressions.

"That an Attorney should have it in his power, either for the sake of ease or interest, or to gratify his malevolence and spite, to commence suits to what Court he pleases, however inconvenient it may be to the Defendant.

"That unlawful fees should be taken on an Indictment, where the Defendant is acquitted by his Country, however customary it might be.

"That Lawyers, Clerks, and others should extort more fees than was intended by Law."

THEIR PROPOSALS FOR REMEDY

"That all debts above 40s. and under £10 be tried and determined without Lawyers by a jury of six freeholders whose judgment shall be final.

"That Lawyers be effectually barred from exacting and extorting fees."[28]

In answer to these petitions and in an endeavor to improve existing conditions, for the next few years there was much attempt at corrective legislation, the effort being in part successful. Governor Tryon had already, in 1766, announced that no county court clerk or practicing attorney should be appointed a justice of the peace.[29] Now, in 1770, another fee-regulating act was passed, namely:

AN ACT TO ASCERTAIN ATTORNIES' FEES

I. Whereas it is necessary to ascertain what Fees Attornies may lawfully take and receive for their trouble in conducting Causes in the respective Courts in this Province:

II. Be it therefore enacted by the Governor, Council, and Assembly, and by the Authority of the same, That it shall and may be lawful for each and every Attorney at Law to take and receive from their respective Clients the following Fees, to-wit:

[28]Col. Rec. VIII—76-79.
[29]Ashe, History of N. C.,—328.

For every action in the Superior Court, except where the Title or Bounds of Land come in Question, the sum of	2	10	0
For every such action in any Inferior Court	1	5	0
For every real action, or such as respects the titles of Lands	5	0	0
For every Petition for the Recovery of Legacies, filial Portions, or Distributive Shares of Intestates, if in Superior Court	3	10	0
If in the Inferior Court	1	15	0
For every opinion or advice in Matters Cognizable in the Superior Courts, where no suit is or shall be brought, or prosecuted, or defended by the Attorney giving such advice, but not otherwise	1	0	0
For every opinion or advice in Matters Cognizable in the Inferior Courts, where no suit is or shall be brought or prosecuted, or defended by the Attorney giving such advice, but not otherwise	0	10	0

And every Lawyer exacting, taking or demanding any greater Fee, or other Reward, for any of the above Services shall forfeit and pay Fifty Pounds for every offence; one Half to our Sovereign Lord the King towards defraying the Contingent charges of Government, and the other Half to the person who shall sue for the same; to be recovered by an Action of Debt, in any Court of Record in the Province having cognizance thereof.

III. And be it further enacted, by the Authority aforesaid, That the Clerk of each respective Court within this Province is hereby directed, and required to tax in every Bill of Costs, where an Attorney shall have been actually employed by the Party who shall recover, or be otherwise entitled to receive, such Fee as is by this Act allowed, and no more.

IV. And Be it further enacted, That if any Attorney, in any Superior or Inferior Court shall wittingly or willingly

be guilty of any Neglect in any Cause, the Court before whom such Cause shall be depending, on Complaint and Proof thereof made within Six Months after such Neglect, shall have full Power and Authority to order such attorney to pay all costs occasioned by such neglect. And every Bill, Bond, Promise, or other Engagement, of what Denomination soever, for the Payment of any other Larger Fees than before enumerated shall be utterly Void and of no Effect; any Usage to the contrary notwithstanding.

V. Provided nevertheless, That it may be lawful for any Person, after the Determination of his Suit, to make his Lawyer a Larger Compensation for his Trouble, if he thinks he has merited the same; any Thing herein contained to the contrary notwithstanding."[30]

A year after the passage of this act another one, providing for further regulation of lawyers, was introduced, but as the Council and Assembly could not agree on its provisions, it failed to pass. Therefore with the above act, legislation in regard to the North Carolina Colonial Bar came to an end. With it ends our account of the history of the Colonial Bar. It would be interesting to go into a detailed account of the part North Carolina lawyers played in the struggle preceding the Revolution and in the war itself; but to do so would require volumes. Everywhere among the patriot leaders we find lawyers in the front. Two of North Carolina's signers of the Declaration of Independence, for instance, were lawyers—William Hooper of Wilmington, and John Penn, of Williamsboro. On the Committee of Safety, in the Provincial Congress, in the North Carolina troops, and finally among the men who organized the government of the State, we find lawyer after lawyer. It is impossible to give the names of all—for in some cases we are not sure that men supposed to be attorneys were regular practitioners—and it would be unfair to give a partial list. Suffice it to repeat that the Colonial Bar did honor to itself in the Revolutionary period.

[30]Col. Rec. XXIII—788-789.

In closing I will make one more quotation from the Colonial Records, namely:

"In the matter of complaints against the lawyers of that day, it will be well enough for those of the present day, and for others, to remember generally that while as a rule lawyers have been among the boldest and best patriots and the earliest and most earnest advocates of civil liberty, there is no rule without its exception, and especially that the lawyers of that day were made such by License from the Governor, who received for his own use a fee for every license issued. It must be remembered too, that in those days the principal remuneration of the Chief Justice arose from fees in suits originating and pending before him."[31]

The writer was considering the complaints made by the Regulators, in particular, but his words apply to the whole Colonial Period. As said in the first part of this article, the majority of the records which we possess are of a hostile nature toward the lawyers. There is a continual chain of complaints made against them, and as a result a chain of legislation directed towards their regulation. When we consider the method by which they were licensed, however, we do not wonder that there were many attorneys who darkened the name of their noble profession. On the other hand we know that many of the lawyers of the period were good, honest men, ever caring for the welfare of the community. That they possessed ability in addition is proved by the fact that several of the province's governors were of their number, and that the majority of the attorney-generals and a large number of the judges of all the courts were chosen out of their number. Remembering, then, the prominent part played by the best lawyers in the province and forgetting the misdeeds of those who never attained any great eminence, we must conclude that honor and admiration is due the North Carolina Colonial Bar.

[31]Col. Rec. VIII, Intro. XVIII-XIX.

THE GRANVILLE DISTRICT

BY

E. MERTON COULTER

CONTENTS

THE GRANVILLE DISTRICT*

In 1663, King Charles II of England granted to eight of his noblemen a large district of land, embracing most of what is now the southern half of the United States. Like most other grants in those days, it extended westward to the vague and unknown "South Seas." The government set up by the Lords Proprietors, as the noblemen were denominated, affected only the Atlantic Seaboard of the present states of North and South Carolina. The form of government they attempted to administer was a grotesque figment of John Locke's imagination. "Locke's Grand Model," as the instrument was called, failed utterly, and so was soon abandoned. A more popular form of government was substituted, but the princely domain from which the Lords Proprietors had hoped to make their fortune proved, nevertheless, a source of endless trouble and vexation to them. It was no less disturbing to the colonists. So, in 1728, the Lords Proprietors, with one exception, sold out their proprietary to the King. The price paid was 2,500 pounds[1] to each of the seven proprietors selling, with a lump sum of 5,000 pounds for all arrears of quit-rents and other rents.[2] The people of the colony received the news of the sale with unbounded joy, as ushering in a day of deliverance from all their evils.

THE DISTRICT GRANTED

The nobleman who continued to hold his interest in the proprietary was John Lord Carteret, soon afterwards made Earl of Granville. He petitioned the King to be allowed to retain his one-eighth interest in Carolina, as the territory had been named. King George, upon the advice of the Board of Trade and Privy Council, decided that Lord Carteret should be allowed to retain one-eighth of the whole district formerly granted

* This paper was awarded the second prize, given by the North Carolina Society of Colonial Dames of America for research in North Carolina Colonial History by undergrauate students in the University.

[1] At this time the English pound was worth $1.66.

[2] C. R. Vol. III—37-38.

to the Lords Proprietors. But in so retaining his one-eighth part he was to surrender to the King his claim to the other seven-eighths, and also give up all power of government over the whole proprietary of Carolina. He was to hold his one-eighth share as a feudal seignior of the Crown,—possessing only property rights in the colony, and was relieved of the expense and trouble of governing it. In surrendering the government of it, he relinquished all powers, in the comprehensive language of the grant, "of making laws, calling or holding of assemblies, erecting courts of justice, appointing judges, or justices, pardoning criminals, creating or granting titles of honor, making ports or havens, taking customs on goods laden or unladen, making and erecting counties, forts, castles and cities, or furnishing them with habiliments of war, incorporating cities, boroughs, towns, villages, raising, employing or directing the militia, making war or executing martial law, exercising any of the royal rights of a county palatine, executing any other prerogatives, pre-eminences, rights, jurisdictions, and authorities of, belonging or relating to, the administration of the government of the said one-eighth part of the said province."[3]

Some of the old ideas of feudal land tenure were adhered to by the King in this grant. In order to impress upon Earl Granville the allegiance he owed to the King as the supreme landlord, George II included the following clause in the indenture: " * * * yielding and paying to his said majesty's heirs and successors the annual rent of one pound, thirteen shillings, and four pence, payable at the Feast of all Saints forever: and also one-fourth part of all gold and silver ore that shall be found within the said one-eighth part of the said premises * * * ."[4] This practice of exacting a nominal rent had also been applied in the case of the proprietary government, the Lords Proprietors being required to pay one-fourth part of all gold and silver ore within the limits of their grant and the yearly rent of twenty marks.[5]

[3]C. R. Vol. IV—662-663.
[4]C. R. Vol. IV—663.
[5]State Records Vol. XI—80-101.

LOCATION—BOUNDARIES—SURVEYS

Although the seven Lords Proprietors sold their share of Carolina to the crown in 1728, there was no definite action taken with regards to Granville's one-eighth part until 1744, when the foregoing conditions were stipulated in the formal grant. Provision was made in this grant for the survey of Granville's share by ten commissioners—five, representing the King, to be appointed by the governors of North and South Carolina jointly or by the governor of North Carolina alone, in case of disagreement, and five to be appointed by Earl Granville.[6] These commissioners were to decide where the one-eighth part should be laid off, and whether it should be a solid tract or be divided among the three colonies of North Carolina, South Carolina, and Georgia, the latter having also been erected within the proprietary's original boundaries. The commissioners appear to have been influenced by very few considerations for the King, Granville, or the people; for their sole object seems to have been to survey the land in the quickest and easiest way. So they naturally began where one line was pretty definitely established; namely, the boundary between North Carolina and Virginia. Their decision was to survey it all in one tract lying directly south of the Virginia line in the province of North Carolina. According to the report sent to the King, "They did immediately proceed to set out and allot to the said John Lord Carteret one full-eighth part of the province of Carolina in one entire separate district in the province of North Carolina next adjoining and contiguous to the province of Virginia * * * and so west as far as the bounds of the charter granted to the Lords Proprietors of Carolina by His Majesty King Charles II."[7]

The commissioners selected to run the southern boundary of the district began to survey the line in the winter of 1743-44, beginning on Hatteras Island at 35° 34′ N. Latitude, which was to bound the district on the South. They were soon so obstructed by the swamps and morasses that they ran the line

[6] C. R. Vol. IV—659-660.
[7] C. R. Vol. IV—660.

only to the town of Bath. In the spring of 1746 the line was taken up at Bath and was carried westward to the Haw River, passing through the present towns of Snow Hill, Princeton, and Smithfield.[8] Here the survey was stopped because of the country "being very thinly peopled, nor can we be supplied either with corn for the horses or provisions for ourselves and those employed by us, there being no inhabitants that can assist us to the west of Saxapahaw River."[9] In the following October the boundary was pushed to Rocky River, which marked the end of the line up to 1766. The surveys and distances were as follows: From Hatteras Island to Bonner's Field (near Bath), 90 miles; thence to Haw River, 104 miles; continuing to Rocky River, 87 miles.[10] The line was finally run to the Blue Ridge Mountains by Governor Martin in 1774.[11]

This immense tract of land, at least sixty miles wide, lying between 36° 30′ and 35° 34′ N. Latitude, was bounded on the east by the Atlantic Ocean and on the west, according to the language of the grant, by the "South Seas." It embraced at least one-half of the province of North Carolina, the lower boundary line running along the southern borders of Chatham, Randolph, Davidson, and Rowan Counties, a little below Catawba County, and on westward.[12] This territory came to be known as the "Granville District" and proved to be a source of endless trouble and vexation to the inhabitants and a serious menace to the welfare of the whole province. Earl Granville referred in his titles to this district in the following way: "The sole Lord or Proprietor of a certain District, Territory or Parcel of land, lying next to the province of North Carolina in America." This tract owned by Earl Granville was the better part of the province. The land was much more fertile, it was the part first settled, and two-thirds of the people lived within its bounds.[13]

---

[8]C. R. Vol. VII—156-157.
[9]C. R. Vol. IV—X-XI.
[10]C. R. Vol. VII—156-157.
[11]Ashe's History of North Carolina, 724 (map).
[12]C. R. Vol. V pp. LIV et seq.
[13]Williamson's History of North Carolina, p. 105.

GRANVILLE'S SYSTEM—LAND AGENTS

Earl Granville thus owned and controlled the better part of the province. In his power lay the welfare of the whole colony to a large extent. He, alone, determined the policy he would pursue concerning his possessions. He was a virtual ruler of the people of his district in those things that touched them closest, property rights. He indeed had no power of appointing governors, but the people cared very little who was governor as long as they were not disturbed in the possession sion of their lands. Earl Granville set up a territorial system of land tenure over which neither the crown nor the colony had any control. The assembly's authority was thus virtually nullified in the most prosperous part of the province in matters pertaining to land-holding and this district contained two-thirds of the people. The land was held by the tenants in fee simple, with a certain fixed quit-rent to be paid annually. A fee was charged for making entries of lands.

To administer his rents, and to look after his interests in general, Earl Granville appointed land agents, very often two, who worked conjointly, or the one alone, when the other should be out of the colony or should die. He also had a surveyor, deputy surveyors, entry takers, and many other inferior officers. He established a land office in Edenton, but appears never to have thought it worth while to establish one farther west as the district grew in population westward. His agents proved on the whole to be very dishonest and inefficient men. They were paid in such a way as to presumably increase their efficiency, for Earl Granville at least; but, in fact, the system led them into exacting exorbitant rents from the tenants. Up to 1752 the agents were paid 10 per cent. of all they should collect and 10 per cent. of all they should remit to Earl Granville. This led them into dishonest dealings both with the Earl and with the people. So, in order to lessen the abuses, the Earl changed their payment to 5 per cent. of all monies and produce received and 5 per cent. of all remitted, with a salary of 200 pounds sterling to each agent.[14]

[14] Williamson's History of North Carolina, 105-106.

QUIT RENTS AND THEIR COLLECTION

The collection of quit rents caused endless disturbances in the district. There was no system whatever. Rent laws were lacking or wholly inadequate. The agents were dishonest. According to a set of general instructions, issued by Earl Granville, his agents were to charge four shillings proclamation money, or three shillings sterling for every hundred acres let to tenants.[15] In some cases, the products of the land were received in lieu of money. Tables of fees and rents, sent over by Earl Granville, were never made public by his agents. Records of grants and entries were carelessly kept. Frequent changes in agent added only to the confusion, as the books were always left in a very incomplete condition. One very serious drawback to the efficient handling of quit rents was the lack of a rent roll giving the names of all the tenants and the amounts of land held by each. Owing to the general confusion, many people moved into the district and took up lands without making entries for them. Numerous laws were passed directing the compilation of a rent roll. By these laws the people who had taken up lands without having made entries for them were allowed to retain their lands provided they registered their claims within twelve months.[16] The question of providing an effectual rent roll was constantly discussed in the Assembly. To keep the rent rolls as complete as possible an act was passed by the Assembly in 1748 requiring all transferences of land, either by sale or will, to be registered in the Court House of the county in which the land lay, or in the land office at Edenton. One great hindrance to making a complete rent roll was Earl Granville's half-hearted co-operation and direct refusal, in some cases, to bear his part of the expense of compiling one.[17]

But the colony seems never to have got a satisfactory rent roll or rent laws; for in 1771, Governor Tryon was begging the Assembly to pass laws that would be as effective as the ones that Virginia had. But, significantly enough, the bills were killed in the Assembly through the opposition of the representatives

[15] C. R. Vol. VI—441-445.
[16] Martin's History of North Carolina, p. 52.
[17] C. R. Vol. V—415.

from the Granville district, "who apparently had no interest in the event."[18] To facilitate the settlement of the province and to collect the back rents, Governor Martin, in 1773, recommended that a rent law be passed remitting all back rents beyond 1771, provided the tenants would register their lands.[19] The reciprocal benefits were extended to the Granville District since it contained, in Governor Martin's opinion, the most valuable part of the province not yet granted. "Inhabitants of this country," he wrote to Lord Dartmouth, "look with greatest avidity toward the territory of Earl Granville, which comprehends almost, if not all, the valuable lands in this province at this day ungranted."[20]

The failure to collect arrears of quit rents was a frequent subject of complaint by the governors. Governor Johnston, in 1750, was 12,000 pounds behind on his salary because Earl Granville received more than half of the quit rents of the province; and the quit rents due to the crown could not be collected.[21] A stringent act was passed in 1754, applying to Granville's District also, which authorized the sheriff of the county to seize slaves, goods, or chattels, and sell them within five days for arrears of quit rents.[22] In 1749, however, the payment of quit rents had been made easier by a provision making receivable inspectors notes for tobacco at one penny a pound, or for indigo at four shillings a pound, proclamation money.[23]

ABUSES BY GRANVILLE'S AGENTS

The system Earl Granville set up worked without very much friction for the first decade. While this great private project was yet young the Earl showed considerable interest in it. But he was soon busied with the intrigues of home politics, leaving his immense estate in the hands of his agents to do with much as they liked. Being for the most part dishonest men, and unrestrained by any watchful authority, they soon began to exact excessive fees from the tenants, and to collect outrageous quit

[18] C. R. Vol. VIII—524.
[19] C. R. Vol. IX—671-672.
[20] Ebid Vol. IX—671-672.
[21] C. R. Vol. IV—1088.
[22] State Records Vol. XXV—308.
[23] State Reports Vol. XXIII—310.

rents. Their systematic pillage of the tenants became a great menace to the welfare of the province and made the existence of the Granville District the most dangerous and disturbing force in colonial North Carolina. Within a decade after Granville received his share of Carolina an investigating committee, appointed by the Assembly, reported the district a nuisance and a hindrance to the well-being of the colony.[24]

The exactions of the agents became so flagrant and unbearable that, in 1758, numerous citizens of the district petitioned the Assembly to redress their grievances. As a result a joint Committee was appointed by the two houses of the Assembly with powers to summon persons and to produce papers.[25] The committee made a conservative report in which they said that no larger fees had been charged by the agent than Earl Granville's instructions called for. They most probably came to this conclusion, however, because, "they finding it worse for their interest to make up matters for Corbin against whom the greatest charge was laid, they changed sides for a valuable consideration and by the report of the committee, they had no redress."[26]

But they discovered a host of irregularities that attest the resourcefulness of the agents. A very frequent practice was to grant the same tract of land to as many as three different persons, and charge a fee for each entry. The case of one Arthur Moore is produced, in which Moore entered a tract of land and paid the entry fee to the agent, Francis Corbin. Moore was to have it surveyed within twelve months and then return to get the deed. Having complied with the conditions, he returned for his deed. Upon investigation Corbin found that one Becton already possessed a deed for the land; so he refused to grant a deed to Moore and refused also to return the entry fee. In the meantime, Becton sued Moore in ejectment and, upon producing his deed, got judgment against him, and had him imprisoned two months until he could pay the costs of the suit. Moore had paid for surveying the lands three pounds

[24] C. R. Vol. V pp. LIV et seq.
[25] C. R. Vol. V—1015-1016.
[26] C. R. Vol. VI—294.

nineteen shillings and ten pence, to the same surveyor who had previously surveyed it for Becton. In many cases an entry would be made under one agent but before the survey could be made and the deed obtained the agent would be succeeded by another, who would grant the land to some one else, charging, of course, an additional fee. Another case of abuse was produced, in which a man who wanted lands already taken up, bribed the sheriff to change the name in the entry book and issue a deed to him accordingly.[27] The agents used another particularly clever scheme to defraud the tenants. Many of the patents for land were signed merely "Granville, by his attorneys * * * ." The agents claimed these patents were defective and totally invalid, since the Earl's title of honor had been omitted. They claimed all patents must be signed "The Right Honorable Earl Granville, by his attorneys * * ." In this way they played upon the ignorance of large numbers of tenants so as to frighten them into making new entries, for which, fees, sometimes double those prescribed, were charged.[28] The regular fee for making an entry was one pistole.[29] About four pounds were charged for using a certain kind of cipher, "Which without authority, they were pleased to affix to a warrant of survey."[30]

The agents were equally as dishonest to Earl Granville as they were to the people. They kept back large amounts of fees beyond their prescribed per centum and salary. One agent upon going out of office, counselled his successor to remember the proverb of the new broom and not remit too much to the Earl for the first few years, as equal amounts would be expected in the future. And, furthermore, the former agent might be apprehended.[31] The agents were banded together to defraud everyone in their way. Complaints of tenants became more frequent. The Assembly remonstrated with Granville, but to no effect, since it could pass no laws touching its agents. Complaints from both the Assembly and the tenants grew so

[27] C. R. Vol. V—1088-1094.
[28] Williamson's History of North Carolina, 106-107.
[29] A pistole was equivalent to one English pound.
[30] Williamson's History of N. C. 107.
[31] Ebid 108.

frequent that Earl Granville became interested enough to write to his agent, Francis Corbin, in 1756, as follows: "Great and frequent complaints are transmitted to me of those persons you employ to receive entries and make surveys in the back counties. It is their extortions and not the regular fees of office which is the cause of clamor from my tenants. Insinuations are made, too, as if those extortions were connived at by my agents; for otherwise, it is said they could not be committed so repeatedly or so barefacedly."[32]

Thomas Child, Attorney General of the colony, and Francis Corbin, were joint agents for Earl Granville during a number of years. They carried on a most subtle system of thievery and corruption, both with the people and with Earl Granville. Child was the master mind in the affair. When he went to England to better carry out his system, he appointed Colonel Innes to the lucrative land agency for a valuable annual consideration. Child wormed himself into the close confidence and favor of the Earl and represented to him the dishonesty of his agents. Whereupon, Granville took all the fees and put his agents on a salary basis. Being betrayed in this way, Innes refused to pay his annual stipulation to Child, whereupon the latter adroitly stopped the remittances before they reached Granville and took what he wanted. With Earl Granville's permission Child now turned Colonel Innes out of office and promptly sold the agency to Wheatly, a naval officer, for 1000 pounds. Earl Granville about this time sent over a table of fees to be made public. Child advised Corbin not to publish the table and to charge the delinquency to Wheatly. This was done, and consequently Wheatly was dismissed. Child now had Bodly appointed "from whom he got about 2000 pounds and other presents of great value." Earl Granville at last instructed Child to call Corbin, his accomplice in North Carolina, to account. Child advised him secretly not to account. In this way strife would be stirred up between Granville and his agents and Child would consequently be sent over to adjust the difficulties. Just such dishonesty pervaded Earl Granville's entire system.[33]

[32] Williamson's History of North Carolina, 205.
[33] C. R. Vol. VI—292-296.

RIOTS AND DISTURBANCES

When Francis Corbin did produce his table of fees the people readily accumulated a great amount of evidence of abuses by the agents—especially by one Haywood. Upon Haywood's refusal to return any of the illegal rents that had been exacted the ferment of the people increased. They had Haywood arrested and speedily brought to trial. During the trial he went home, where he suddenly died, and was secretly buried. When the prosecutors heard of this they believed it to be a false report inspired by Haywood. In their rage they went in a large body to his home, dug up the grave, and tore open the coffin. On finding the corpse they left satisfied.[34]

The people were by this time in no pleasant mood. They could obtain no redress nor could they get back any of the illegal rents that had been taken from them. The fees in Earl Granville's estate were double and sometimes triple the fees paid in the crown lands. And to aggravate conditions further, Granville's agents refused to receive payments in anything except gold and silver.[35] Unable to bear the abuses any longer and despairing of obtaining a redress of their grievances, a body of men, some say twenty, gathered from Edgecombe and Granville counties in the early winter of 1759, armed and mounted, and rode to Corbin's house near Edenton. Although they reached his house in the dead of night, they forced him to accompany them immediately seventy or eighty miles to Enfield.[36] Here they held him for some days until he could give bond with eight sureties, by which under penalty of 8,000 pounds, he promised to produce his books within three weeks and return all the money above the regular fees.

A few months after this riot the magistrates of Halifax county failed to nominate a sheriff. The governor proceeded to appoint one of the most active of the rioters and, as a consequence, the Assembly was unable to prevail on the sheriff to carry out prosecutions against the rioters. Members of the Assembly accused Governor Dobbs of being in league with them.

[34] C. R. VI—294-294.
[35] C. R. Vol. V—645.
[36] C. R. Vol. VI—295.

The governor stoutly denied it and brought the charge that the Assembly had been favorable toward them. For some time the district remained in turmoil and confusion. The Attorney-General of the colony, Robin Jones, refused to prosecute the rioters through fear. He had agreed with Francis Corbin, for a large consideration, to be his counsel against the rioters. When the rioters heard of this they threatened dire vengeance and destruction on Jones, and forbade him to plead in the General or County Courts, "and frightened him so that he always carried pocket pistols about him."[37] The rioters also threatened "to pull him by the nose and also to abuse the court."[38]

The troubles became so serious that in May, 1759, the Assembly passed the following resolution: "This house has resolved that a reward of twenty-five pounds be paid out of the public treasury by a warrant from his Excellency the Governor, to each of the two persons who shall first make a full discovery on oath to the Chief Justice or Attorney-General, of the principal persons who have been concerned in the late riots, combinations and traiterous conspiracies, in that part of the province within the Right Honorable Earl Granville's Proprietary on the condition of any of the said offences. To which (they) desire your Honor's concurrence."[39] Attorney-General Jones demanded of the Governor that the rioters be punished. He affirmed that unless they were, there would be no safety or peace in the country. Francis Corbin now, instead of producing the books and remitting illegal fees, brought suit against four of the rioters, who upon refusing to give bail were thrown into prison at Enfield. The next day a large mob of people from the surrounding country broke open the jail and released the prisoners. These rioters came from the district included in the present counties of Halifax, Nash, and Wilson. After these disturbances Corbin took flight and ordered the prosecution stopped. He knew he had done wrong things he could not justify; and Child thought the fault would be laid at Earl Granville's land office.[40]

The Assembly was bitter against the rioters and laid much of

[37] C. R. 295.
[38] C. R. Vol. VIII-IX.
[39] C. R. Vol. VI—94.
[40] C. R. Vol. VI—297.

the trouble at the door of the governor. In 1760 they passed a resolution: "That though the governor was addressed by the Assembly in June last to take necessary measures to suppress the several mobs and insurrections which for many months, in violation of all law, have with impunity assembled in great numbers in different counties, erected show jurisdictions, and restrained men of their liberty, broke open gaols, released malefactors, dug up the dead from the grave, and committed other acts of rapine and violence, no effectual steps have been taken to check the torrent of their licentious extravagances notwithstanding their having repeated those outrages."[41] The Assembly charged the Governor with preferring rioters to the magistracy and militia over just and honorable men "whereby magistracy has fallen into disgrace, courts have lost their influence, and government its dignity, and life, liberty, and property is rendered precarious."[42] This reign of lawlessness was never sternly repressed. Conditions remained more or less unsettled until the Revolution. A few years later the conditions in the province were characterized in this way:

"For some years past this province has been running into great disorder and confusion. There is nothing like the administration of justice among us. (On account of) a silly fellow, that headed a mob against the Earl of Granville, his land office is put into the commission of the peace."[43] The famous Regulator troubles were the outgrowth and culmination of the Enfield riots and Granville Country disturbances. "Halifax and Granville," said Herman Husband, the leader of the Regulators, "were deeply engaged in the same quarrel years before Orange."[44]

IMMIGRATION INTO DISTRICT

As has been mentioned before, Earl Granville showed some real interest in his Carolina estate for the first decade of its existence. He attempted to develop it and make not only a fortune from it, but also to create a thriving class of tenants. He induced the best immigrants to settle in his district. Large

[41] C. R. Vol. VI—292.
[42] C. R. Vol. VI—292.
[43] C. R. Vol. VI—234.
[44] Swain's War of the Regulation.

numbers of immigrants from Pennsylvania, Maryland, and Virginia settled the northern and western portions of his territory. The land was cheap and also easy to obtain at this time. In Pennsylvania land was so dear that very few immigrants could settle there; and in Virginia laws against religious liberty were very unattractive and objectionable. Many people from these colonies and also many from Ireland, coming by way of these colonies, finally settled in Granville's District.[45] Another very substantial and law-abiding people that came to Granville's District were the Moravians. Earl Granville, through his influence as Secretary of State of Great Britain, induced them to settle in his estate. Bishop Spangenberg bought for the Moravians in 1753 approximately 100,000 acres of land lying between the Dan and Yadkin Rivers,[46] now included in Forsyth County. The Moravians were to pay an annual rent to Earl Granville or his heirs.[47]

ENCROACHMENTS AND CONFLICTING CLAIMS

Later grants were very much harder to obtain and in fact impossible after 1766, when the land office was closed through neglect. The people who came in, consequently, settled down wherever they pleased and paid quit rents and allegiance to no one.[48] It was just such conditions that led Richard Henderson to attempt to set up the colony of Trannsylvania. This large tract of land consisted of more than 35,000,000 acres, lying beyond the Blue Ridge mountains, in what is now Tennessee and Kentucky. A large part of it was included in the Granville District. Henderson, however, asked Granville nothing; but leased the land from the Indians for 999 years. Large numbers of tenants from Granville's District east of the Blue Ridge, also many tenants of the Crown, were induced to settle there. The project threatened to seriously interfere with the prosperity of Granville's estate and with the whole colony. The settlers acknowledged no authority of Earl Granville or of the governor of North Carolina, and, of course, refused to enter

[45]Williamson's History of North Carolina.
[46]Martin's History of North Carolina, 57.
[47]C. R. Vol. V—1146.
[48]C. R. Vol. VIII— 195.

their lands and pay quit rents.[49] Governor Martin in February, 1775, issued a proclamation against Henderson, forewarning the people to obstruct him in his attempts to form a colony. "This daring, unjust and unwarrantable proceeding," said Governor Martin, "is of most alarming and dangerous tendency to the people and welfare of this and the neighboring colony."[50] "Such a colony of freebooters," he believed, "cannot but be a most dangerous tendency to the public interest."[51]

Earl Granville was troubled not only by the encroachments of Richard Henderson but he came in conflict also with Henry McCulloh. In 1737 the King of England had granted to McCulloh 1,200,000 acres of land in the province of North Carolina with the proviso that he should settle one person to every 200 acres within the following ten years.[52] As this grant was made prior to the laying off of Granville's share, much land comprehended in it was afterwards included in Granville's grant. At least 475,000 acres fell within Granville's share. These overlapping boundaries caused endless trouble. McCulloh was continually complaining that Granville's land agents intimidated his tenants and collected rents from them.[53] He also charged the agents with granting his lands to tenants and keeping the fees. These disturbances, retarding the development of the district, continued until 1755, when Granville and McCulloh came to an agreement. Granville promised to surrender all rights and privileges he held from the King respecting the territory in question; and he authorized his agents to abide by the agreement. [54] In return McCulloh was to pay annually to Granville, from 1757 to 1760, the sum of 400 pounds in lieu of quit rents. McCulloh agreed to pay after 1760 the regular rate of quit rents: namely, four shillings proclamation money or three shillings sterling, for every 100 acres. He was also required to register in Earl Granville's land office, within twelve months, all grants of land made in this territory. The foregoing agreement was to hold provided he should give up to Granville all

[49] C. R. Vol. X—246.
[50] C. R. Vol. IX—1123-1124.
[51] C. R. Vol. X—273.
[52] C. R. Vol. IX—104, Vol. V—569-573.
[53] C. R. Vol. IX—104.
[54] C. R. Vol. V—78-79.

lands after a fixed time, which had not an average of one settler to the 200 acres.[55] This agreement did not end the troubles, for some years later McCulloh brought suit against Francis Corbin, Granville's land agent, for 8,000 pounds which amount he claimed equalled the rents illegally collected by Corbin. He claimed Corbin had "with wicked and avaricious intentions" intimidated persons settled on the McCulloh tract and had also admitted entries and passed grants of this territory.[56]

Earl Granville also came in contact with the remnants of the Tuscarora and Meherrin Indians occupying 10,000 acres[57] of his district, on the east bank of the Roanoke River. No quit rents, of course, could be collected from them. But, in 1767, one hundred and fifty of them were removed "to the Six Nations on the Susquehanna River, leaving a remnant of 104 men, women, and children occupying about one-half the tract allotted to them in 1748 by the Assembly."[58] The land left vacant by them was now open to settlement; and quit rents might now be collected from the tenants who moved in.

DISADVANTAGES OF GRANVILLE'S DISTRICT TO THE COLONY

As stated before, the Granville District proved to be a great burden to the people of North Carolina. This came about in many ways. The granting of this district set up within the province an outside authority which, in most things, could not be controlled by the Assembly of the colony. On account of defective surveys, and many times because of no surveys at all, boundary disputes were constantly arising between Granville's agents and the governor and his agents. In 1760 Francis Corbin wrote Granville charging Governor Dobbs with granting lands belonging to Earl Granville. The Earl immediately demanded of Dobbs that he cancel the grants. The governor claimed he had granted no lands belonging to Granville and at once dismissed Corbin from the Assistant Judgeship and from his position as Colonel of the Chowan Regiment. Upon investigation it was found that both were guilty of making grants of

[55] C. R. Vol. V—624-626.
[56] C. R. Vol. V—780.
[57] C. R. Vol. VI—616.
[58] C. R. Vol. VII—481.

land belonging to the other.[59] A few years later Governor Dobbs claimed that Earl Granville had encroached upon the King's land at least nine miles by running the boundary line in Latitude 35° 26′ instead of 35° 34′.[60] Just such disputes and disturbances had of necessity to arise, because of the mere existence of the separate tract of land. Such uncertainties of boundary lines led naturally to unsettled conditions. Many people came in and settled down without taking out grants, as they did not know in whose part they might fall. Others who took out grants refused to pay rents either to the Corwn or to the Earl, as both claimed the territory. Such conditions made impossible the development of a law-abiding population.

Certain boundary troubles also existed with Virginia along the western borders of the district. The settlement of the land near the boundary was greatly retarded, as the people did not know whether they would fall within North Carolina or Virginia.[61] But in 1749, the boundary was surveyed to the mountains, "where they (surveyors) crossed a large branch of the Mississippi which runs between the edges of the mountains and of which nobody ever dreamed."[62] All these boundary disputes, troubles, and disturbances, incident to Granville's retention of an eighth of the old proprietary grant were evils from which the other colonies were largely free.

The presence of this district had a serious effect on the financial conditions of the provincial government. A large part of the colonial revenues came from quit rents. At least two-thirds of the quit-rents of this province went direct to Earl Granville, who spent nothing toward governing the colony. One paltry third of the quit rents thus went to the government of North Carolina. Hence one-third of the people, those living within the lower and poorer half, paid the greater part of the costs of maintaining the provincial government. It is no wonder that we find the governor complaining that the colony has no money, that he is 12,000 pounds behind on his salary and that the quit rents due the crown cannot be collected.[63] It was,

[59] C. R. Vol. VI—298-300.
[60] C. R. Vol. IX—1243-1244.
[61] C. R. Vol. IV—1047.
[62] C. R. Vol. IV—1047.
[63] C. R. Vol. IV—1088.

no doubt, discouraging to the people living on the crown lands, to pay their rents to the provincial government, and see the fees and rents from the fertile northern section go into the coffers of Earl Granville or be absorbed by his dishonest agents. This dual system divided the interests of the colony. The province did not exist as a unit. The northern inhabitants did not have the same attitude toward the governors that the southern inhabitants had. They paid their rents direct to Granville's agents, and were thereby removed from the most frequent causes of disputes with the governors and their agents. The governor could require of them nothing in which they would have the least interest or motive in opposing him. Consequently we never find the northern inhabitants, until the Regulator troubles, arrayed against the governor. Their great troubles lay with Granville's agents. If we are to believe the charges made by the Assembly directly after the Enfield riots, the governor was especially friendly to the northern inhabitants and preferred them in office. The inhabitants of the Granville District occupied a rather anomalous position. In writing to the home government in 1773 Governor Martin complains of the Granville District, that it creates and widens a division in the state and that it had a disastrous effect on politics.[64]

John Lord Carteret died in 1763 and was succeeded in his title of Earl of Granville by his eldest son, who showed no interest whatever in the district he inherited in North Carolina. His utter neglect added to the disastrous effects his district was already producing. He allowed his land office to remain closed for many years. It was extremely difficult to get a hearing from him on the most important matters.[65] Large numbers of people desired to settle in his district, but they were unable to get grants of land. The best and most substantial of them turned away for other colonies; while the shiftless and vicious, who had no permanent interests anywhere, came in and took up lands wherever they desired. When there was any possibility of trouble or disturbance of any kind, they were generally found in the forefront, as they had nothing to lose and perhaps some-

[64] C. R. Vol. VII—642-644.
[65] C. R. Vol. IX—990.

thing to gain. The spirit of the Regulators found its beginning in those people who came in and settled down without receiving grants or paying rents, and who, when rents were demanded, resisted. Governor Martin wrote Lord Dartmouth in 1772 that in Granville's District "there was not wanting evidence of most extravagant licentiousness and criminal violence on the part of the wretched people."[66] Such wickedness, he said, would naturally terminate in bloodshed, and that this disorderly spirit could never be extinguished as long as Earl Granville held the land. "It is profitless to the proprietor," he continues, "and a nuisance to the colony, by affording an asylum to outcasts and fugitives of other provinces who set down on the land anywhere, communicating their vices and corruptions to the other inhabitants, whose barbarous ignorance makes them but too obnoxious to the baneful contagion." He believed the district was an evil growing daily more alarming. According to his opinion the only remedy lay in the better care of the proprietary, or its sale to the King.

Earl Granville was finally prevailed upon to show enough interest to appoint an agent. So, in 1773, he chose Governor Martin to act as his agent.[67] By this time the inhabitants of the district had become so restive that it appeared impossible to quiet them as long as the land remained in Earl Granville's hands. Under Granville's rule the inhabitants often resorted to force when they thought it necessary, but they were methodical in its use. They believed that "the doctrine of non-resistance against arbitrary power and oppression was absurd, slavish, and destructive of the good and happiness of mankind."[68]

PURCHASE BY CROWN ADVOCATED

Shortly before the Revolution the provincial Assembly appointed a committee of five to inquire into the settlement of Granville's land, and to propose plans for quieting the inhabitants in possession of it.[69] But nothing came of this action. The assembly soon came to believe that the only way to put an end

[66] C. R. Vol. IX—357-359.
[67] C. R. Vol. IX—683.
[68] C. R. Vol. IX p. XI.
[69] Ibid 530.

to the troubles of the Granville District lay in its purchase by the Crown. In pursuance of this idea the Assembly petitioned the Crown, in 1773, to buy Granville's part of the province, "as Earl Granville's office has been closed for several years past to the great inconvenience and grievance of the inhabitants of his territory in this province."[70] As early, however, as 1767, Governor Tryon in writing to the Earl of Shelbourne, strongly advocated the purchase of the district by the Crown. In this course he saw a cure for most of the evils besetting the colony at that time. It would treble the value of quit rents coming to the Crown and would facilitate the passage of better laws for the collection of rents, he thought. In his opinion the inhabitants of the district, although they wanted the land very bad, dreaded the opening of a land office, "because of the many impositions and abuses they have suffered by former agents, and from the many disturbances and law suits that have arose from the irregularities in the office when it has been open." He believed that 60,000 pounds sterling, the amount asked for the district by Granville, would be a cheap price to pay for it. He characterized it as "certainly the most rising interest on the Continent of America." He said it contained a vast majority of the white inhabitants of the colony and embraced thirteen entire counties," the two western-most of which contain a tract of land more than ten times the contents of Rhode Island Colony, Orange County being nearly sixty miles square, and Rowan County about sixty miles wide and 150 miles from east to west, running to the Blue Ridge of Mountains."[71]

When Martin became governor, he believed, like Tryon, that the King should purchase the district, which was the cause of so much trouble. The rents are inadequate, he writes to the Earl of Hillsborough, to support the "provincial civil list with which it is chargeable." He thinks the district would soon grow, for the climate is healthful, the land is fertile, and the people will flock there when they know they can get good titles.[72] The Earl of Hillsborough in replying, said: "The little attention shown by Earl Granville to his proprietary rights in North

[70] C. R. Vol. XX—589.
[71] C. R. Vol. VII—513.
[72] C. R. Vol. IX—357-359.

Carolina is certainly both a prejudice to himself and to the public, and your suggestion of the expediency and advantage that would arise to the Crown from a purchase of those rights entirely correspond with my own sentiments."[73] When the inhabitants learned that the district was likely to be sold, they knew the day of reckoning would come, when the arrears of quit rents would be insisted upon. They were very clamorous that it pass not into private hands.[74] But they were willing to come under the Crown, since they knew, in that event, the arrears would not be insisted upon. In writing to the home government again, Governor Martin says, "The Proprietary right of Earl Granville in the heart of this province, I learn from all hands, My Lord, to be a very principal cause of the discontents that have so long prevailed in this country * * * It seems here a universally acknowledged principal that this country will never enjoy perfect peace, until that proprietary, which erects a kind of interest in its bowels, is vested in the Crown."[75]

DISTRICT CONFISCATED BY STATE.—ATTEMPTS AT REGAINING IT

Earl Granville was undoubtedly on the verge of selling out his district to the King when the Revolution came and swept away all his claims to his broad Carolina estates. The people now set up a different system of land tenure in which none of the troublesome quit rents existed. By an act of the General Assembly in 1782 Granville's immense estates were confiscated. His old papers and books were collected and preserved as valuable to the northern settlers.[76] But the Granville heirs did not propose to lose their broad lands in North Carolina without at least a struggle. In 1784, they presented their claims to the United States Minister at Paris and demanded a restitution of their lands. They denied the titles to the land of many of the inhabitants of the northern part of the state and, some years later, brought suit in the United States Circuit Court at Raleigh to regain the district. On losing here, they appealed to the United States Supreme Court, where they engaged Francis

[73] C. R. Vol. IX—276.
[74] Ibid 261-262.
[75] Ibid 49.
[76] State Reports Vol. XIX—280.

S. Key as their counsel. But Key died soon afterwards (in 1809) and the case was dropped for want of an appeal bond. Had the case ever come to a final decision it would likely have been decided against North Carolina, as Chief Justice Marshall had expressed the opinion that the Treaty of Paris prohibited a state from invalidating English titles.

According to Article V [77] of the Treaty of Paris, as interpreted by the Supreme Court,[78] North Carolina was under obligation to restore the land. For a time great uneasiness was felt throughout the state. It is impossible to say what might have happened had the Courts ordered North Carolina to restore the land.[78] But luckily for the state, the night-mare of her colonial existence was not to harrass her in her statehood. The greatest hindrance to the colony of North Carolina was finally removed.[79]

[77] "It is agreed that the Congress shall earnestly recommend it to the legislature of the respective states, to provide for the restitution of all estates, rights and properties which have been confiscated, belonging to real British subjects and also of the estates, rights, and properties of persons resident in districts in the possession of His Majesty's armies, and who have not borne arms against the said United States. . . . . ."

[78] Ware vs. Hylton 3 Dallas 199.

[79] Moore's History of North Carolina Vol. I—456.